

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GERTRUDE BROADNAX	:	CIVIL ACTION
	:	
v.	:	
	:	
LIFE INSURANCE CO. OF NORTH	:	NO. 03-3204
AMERICA and CIGNA GROUP	:	
INSURANCE	:	

**MEMORANDUM**

**Baylson, J.**

**June 17, 2005**

**I. Introduction**

Presently before this Court is a Motion to Dismiss Count II of Plaintiff's Complaint, filed by Defendants Life Insurance Company of North America ("Defendant LINA") and CIGNA Group Insurance ("Defendant CIGNA"), pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, the Defendants' Motion will be granted.

**II. Jurisdiction and Legal Standard**

This Court has subject matter jurisdiction in this case, pursuant to 28 U.S.C. § 1331. Venue is proper as a substantial portion of the acts giving rise to the claims occurred in this judicial district.

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court may grant the motion only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, the plaintiff is not entitled to relief. Doug Grant, Inc. V. Greate Bay Casino Corp., 232 F.3d 173, 183 (3d Cir. 2000).

Accordingly, a federal court may dismiss a complaint for failure to state a claim only if it is clear

that no relief could be granted under any set of facts that could be proved consistent with the allegations. Doe v. Delie, 257 F.3d 309, 313 (3d Cir. 2001).

### **III. Background**

#### **A. Procedural Background**

On April 23, 2003, Plaintiff, Gertrude Broadnax, filed a Complaint in the Court of Common Pleas of Philadelphia County. On May 20, 2003, Defendants removed the case to federal court. On July 2, 2003, Defendants filed a Motion to Dismiss Count II pursuant to Rule 12(b)(6). Plaintiff filed a Response on October 9, 2003. In an Order dated October 28, 2003, this Court placed this case in suspense. On February 22, 2005, the case was restored to the Court's active docket and the parties were given leave to file supplemental briefs relating to the pending Motion to Dismiss. On March 4, 2005, Defendants filed a Supplemental Motion to Dismiss. Plaintiff filed a Supplemental Response on March 7, 2005.

#### **B. Allegations of the Parties**

##### **1. Plaintiff**

Count I claims that Defendants wrongfully refused to make any payments to Plaintiff under a long-term disability insurance policy. (Compl. at ¶¶7-15). Count II alleges that both Defendants acted arbitrarily and capriciously when they withheld Plaintiff's long-term disability benefits. Id. at ¶¶17-20. Plaintiff contends that the termination of her benefits constituted an abuse of discretion and was not based on substantially sound or credible medical evidence. Id. at ¶19. Plaintiff seeks damages not in excess of \$50,000 for each Count. Id. at 4.

##### **2. Defendants**

Defendants argue that because Count II is a bad faith claim that arises from Pennsylvania

law, 42 Pa.C.S. § 8371, it is preempted by the Employee Retirement Income Securities Act of 1974, 29 U.S.C. § 1001, et seq., as amended (“ERISA”). See Barber v. Unum Life Ins. Co. of Am., 383 F.3d 134, 144 (3d Cir. 2004) (holding that ERISA preempts Pennsylvania’s bad faith statute for insurance claims). Further, Defendants argue that ERISA’s exclusive remedies are found in 29 U.S.C. § 1132 (a), which does not authorize bad faith claims. (Def’s Supplemental Brief at 3). Therefore, Defendants argue that Count II must be dismissed with prejudice.

#### **IV. Discussion**

The Third Circuit recently held that Pennsylvania’s bad faith statute, 42 Pa.C.S. § 8371, is preempted by ERISA. Barber, 383 F.3d at 144; see also Pryzbowski v. U.S. Healthcare, Inc., 245 F.3d 266, 271 (3d Cir. 2001) (stating that if a claim falls within the scope of ERISA’s civil enforcement provisions, it is preempted); Aetna Health Inc. v. Davila, 124 S. Ct. 2488, 2495 (2004) (noting that “any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted”).

Applying this precedent to the current case, Count II of the Complaint, which states a bad faith claim against Defendants, is preempted by ERISA and must be dismissed. Plaintiff concedes, as she must, that a bad faith claim is preempted by ERISA. (Pl’s Supplemental Response at 4). However, Plaintiff argues that if the Court strikes the words “and are in bad faith” from Paragraph 19 of the Complaint, Count II would survive because, so modified, it “alleges violations of ERISA.”<sup>1</sup> (Pl’s Proposed Order). This Court disagrees.

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<sup>1</sup> The Court notes that Plaintiff makes these suggestions in a Proposed Order and does not cite any ERISA provision that would allow Count II to proceed.

ERISA's exclusive remedies are detailed in Section 1132, which allows a beneficiary or participant of an ERISA-regulated plan to bring a civil action for three purposes: 1) to recover benefits due to him under the terms of his plan; 2) to enforce his rights under the terms of the plan; or 3) to clarify his rights to future benefits under the terms of the plan. 29 U.S.C. §1132 (a)(1).

After reviewing the Complaint and applying ERISA, the Court concludes that Count I satisfies §1132 because it seeks to recover benefits due under the plan. However, Count II fails to state a claim under ERISA because it does not seek any of the three remedies authorized by Section 1132.

Even if the Court strikes the words "and are in bad faith," Count II still alleges that Defendants' actions were "arbitrary and capricious;" "unconscionable and without any reasonable foundation;" and "an abuse of discretion." (Complaint at ¶¶17-19). Contrary to Plaintiff's assertions, such a claim would be no different from a bad faith claim. See Pryzbowski, 245 F.3d at 273 (concluding that the claim that defendant acted arbitrarily and capriciously by delaying benefits fell within the realm of the administration of benefits and was preempted). "Such a claim, no matter how couched, is completely preempted" by ERISA. Id. Therefore, Count II must be dismissed with prejudice.

## **V. Conclusion**

Because Count II of the Complaint is a bad faith claim and is preempted by ERISA, Defendants' Motion to Dismiss Count II will be granted.

An appropriate Order follows.

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**ORDER**

AND NOW, this 17th day of June, 2005, based on the foregoing memorandum and upon consideration of the briefs, it is hereby ORDERED that Defendants' Motion to Dismiss Count II (Doc. Nos. 2 and 10) be GRANTED. Count II is hereby DISMISSED with prejudice.

**BY THE COURT:**

/s/ Michael M. Baylson

**MICHAEL M. BAYLSON, U.S.D.J.**